

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMBER RUSSELL)	
Claimant)	
VS.)	
)	
RAY RHOADES, DDS)	Docket No. 1,031,866
Respondent)	
AND)	
)	
STATE FARM FIRE & CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the April 25, 2007, preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

Claimant alleges she injured both upper extremities at work in a series of repetitive traumas ending on October 26, 2006, which was the last day claimant worked for respondent. In the April 25, 2007, preliminary hearing Order, Judge Howard granted claimant's request for medical benefits.

Respondent and its insurance carrier contend claimant failed to prove her alleged upper extremity injuries arose out of and in the course of her employment with respondent. They argue the greater weight of the evidence proves claimant injured her upper extremities in a May 24, 2006, automobile accident in which she had her arms outstretched in front of her at the time of the impact. Moreover, they argue claimant's duties at work were neither repetitive nor hand-intensive.

Respondent and its insurance carrier also contend claimant failed to provide respondent with timely notice of her alleged injuries. They argue claimant last worked for respondent on October 26, 2006, and respondent did not receive notice that claimant was alleging work-related injuries until sometime after claimant filed her application for hearing, which was filed on or about November 13, 2006. Accordingly, respondent and its insurance carrier contend claimant failed to provide notice of her alleged work-related accident or injuries within 10 days of her last day of work.

In short, respondent and its insurance carrier request the Board to reverse the April 25, 2007, Order.

Conversely, claimant requests the Board to affirm the April 25, 2007, Order. Claimant argues she developed bilateral carpal tunnel syndrome and left cubital tunnel syndrome from the hand-intensive work she performed for respondent as a receptionist and dental assistant. Moreover, claimant argues respondent failed to present any medical evidence to contradict Dr. Bernard M. Abrams' opinion that claimant's bilateral carpal tunnel syndrome and left cubital tunnel syndrome were caused by her work activities. Finally, claimant argues she told Dr. Ray Rhoades in September 2005 that she was having symptoms in her upper extremities and that the doctor responded by saying her condition was common in the dental profession.

The issues before the Board on this appeal are:

1. Did claimant prove her alleged upper extremity injuries arose out of and in the course of employment with respondent?
2. If so, did claimant prove she provided respondent with timely notice of her alleged accidental injuries?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds and concludes:

In March 2004, claimant began working for Dr. Ray Rhoades' dental office where she answered the telephone, entered computer data, and assisted the doctor with patients. Sometime during 2005 claimant began experiencing numbness and tingling in her hands. Claimant's hands would awaken her at night and at work they would feel numb while she was talking on the phone or while she was holding the suction device for the dentist. Moreover, her hands would sometimes cramp while she was cleaning teeth.

Claimant testified she told Dr. Rhoades about her hand symptoms and she believes she told him in September 2005. According to claimant, the doctor replied by stating that her symptoms were common in their profession.

Despite her upper extremity symptoms, claimant continued working for respondent. On May 24, 2006, claimant was in an automobile accident when a car pulled out in front of the vehicle in which claimant was riding. Claimant struck her face on the dash and injured her neck and back in that accident. Following the May 2006 accident, claimant was

given EMG tests and, according to claimant, was told by a Dr. Miller that she had carpal tunnel syndrome and that repetitive motion from her job may have caused the condition.

A few weeks after that accident, on July 15, 2006, claimant was in a second automobile accident when she was rear-ended. That accident allegedly caused a concussion and mild brain stem injury. And finally, on approximately October 26, 2006, claimant fell in the bathroom at work and hit her head and shoulder.¹

Claimant denies any of those accidents affected her hands or arms. And other than missing a few days from work following both of the automobile accidents, claimant continued to work for respondent through October 26, 2006. Claimant has not returned to work anywhere following October 26, 2006, as Dr. Rhoades advised claimant he was going to replace her until she was released to return to work.

Dr. Rhoades was present at the April 24, 2007, preliminary hearing, but he did not testify. Nonetheless, the dentist's office manager, Dana Perez, testified that claimant never advised her upper extremity problems were related to her work but, instead, related her symptoms to her May 2006 automobile accident. Indeed, Ms. Perez testified she had no idea claimant was alleging a work injury until sometime after October 2006 "[w]hen we received the claim."²

The only expert medical opinion in the record at this juncture is the December 26, 2006, report from claimant's expert, Dr. Bernard M. Abrams. The doctor examined claimant on December 19, 2006, and determined claimant had bilateral carpal tunnel syndrome and left cubital tunnel syndrome. The doctor wrote, in part:

This patient has bilateral carpal tunnel and a left cubital tunnel syndrome demonstrated by electromyography. These are results of her employment at Dr. Rho[a]des' office with reasonable medical certainty if her history is verifiable. These conditions require surgery for alleviation. . . .³

Judge Howard did not make a specific finding that claimant's upper extremity injuries arose out of and in the course of her employment with respondent nor did the Judge make a specific finding that claimant provided respondent with timely notice of the alleged accident or injuries. Nevertheless, those findings are implied as the Judge granted claimant medical benefits. Moreover, it is also implicit the Judge found claimant's

¹ That accident is the subject of another claim.

² P.H. Trans. at 22.

³ *Id.*, Cl. Ex. 1.

testimony credible regarding how her upper extremity symptoms developed over the course of her employment with respondent or the Judge would have denied claimant's request for workers compensation benefits.

At this juncture of the claim, the undersigned finds claimant has established she developed repetitive trauma injuries to both upper extremities due to the work she performed for respondent. Most of the work claimant performed required hand movement. And some of the work, such as cleaning patients' teeth, required intensive repetitive hand movement. Moreover, before claimant was involved in the two car accidents and the fall at work, her symptoms were severe enough to awaken her at night and to cause numbness and cramping in her hands at work during the day.

Claimant's testimony is credible that she advised Dr. Rhoades of her symptoms as early as September 2005. Accordingly, the undersigned finds claimant provided timely notice of her alleged upper extremity injuries.

The undersigned notes the parties did not stipulate to a date of accident for these alleged repetitive trauma injuries and the Judge did not make a specific finding setting forth that date. For purposes of the final hearing, the parties are reminded the date of accident for repetitive trauma injuries is set by K.S.A. 2005 Supp. 44-508(d). Consequently, in the absence of a stipulation, the parties should present evidence as to which factor listed in that statute establishes the accident date.

By statute, these preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member affirms the April 25, 2007, Order entered by Judge Howard.

IT IS SO ORDERED.

⁴ K.S.A. 44-534a.

Dated this ____ day of June, 2007.

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
Denise E. Tomasic, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge